IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8595 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHEMAD AMIJI & 3 - Petitioner(s)
Versus
DEPUTY COLLECTOR & 2 - Respondent(s)

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Appearance :
MR MUKUND M DESAI for Petitioner(s) : 1 - 4, 4.2.1, 4.2.2, 4.2.3, 4.2.4,4.2.5
GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/03/2007

ORAL JUDGMENT

1. Heard Mr.Mukund Desai, learned counsel for the petitioners and Mr.L.R. Pujari, learned Assistant

Government Pleader for the respondents – State.

2. By the writ application, the petitioners seek to challenge the orders passed by the Deputy Collector, Palanpur, Collector, Palanpur, Dy.Secretary (Appeals), Revenue Department, where-under the Deputy Collector has held that the in the name of partition or family arrangement / settlement, the petitioners, in fact, were transferring the land in breach of the provisions of law, he directed forfeiture of the land. The order has been confirmed by the Collector and approved by the Dy.Secretary.

3. Mr.Desai, learned counsel for the petitioners submits that from the tenor of of allotment, it would clearly appear that separate parcels of land were allotted to the family members and under the circumstances, if they have settled equities amongst themselves or have transferred some parcels of land in favour of another family member, then, such settlement / family arrangement would not amount to transfer of the land calling for capital punishment of forfeiture.

4. Mr.Pujari, learned Assistant Government Pleader for the respondents – State on the other hand submitted that separate parcels of land were allowed in favour of different persons and amongst Mohammedan, there is

nothing like joint family or common family interest in the land, if the land had been allotted in favour of different persons.

5. From the orders made by the authorities allotting the land in favour of the different persons, it would clearly appear that separate survey numbers were allotted in favour of different persons. Land bearing Survey No.26/3 was allotted in favour of Ismailbhai Amiji, land bearing Survey No.48 was allotted in favour of Kasambhai Usmanbhai and Sikandar Amiji; while land bearing Survey No.49 was allotted in favour of Ibrahimbhai Amiji and Ahemad Amiji. It would further be seen that all these persons have virtually partitioned the land and under such partition, Sikandar Amiji who was not allotted land of Survey No.49, now receives a part of land of Survey No.49 and a part of Survey No.26/3. Similarly, Ahemadbhai Amiji who was not allotted land of Survey No.26/3, now receives a part of land of Survey No.26/3. Nurmohammed and Ismailbhai Amiji would now be getting a part of land of Survey No.48; while in fact, land of Survey No.48 was allotted to Kasambhai Usmanbhai and Sikandarbhai Amiji. The manner in which the land was brought to the common pool and partition would clearly show the intention of the

parties that they were transferring their specific interest in favour of third persons. If land was specifically allotted to a particular person, their such land would be specific property of such person and no family member can claim ownership or seek partition.

6. If the intention of the petitioners was to transfer the parcels of land in favour of those who had no existing interest in the property, then such transfer would be contrary to law.
7. After going through the records available and for the reasons aforesaid, I am unable to hold that the orders passed by the authorities are wrong and call for any interference.
8. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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